

News of Against Child Abuse

2021.04.21 SCMP Failure to report child abuse in Hong Kong could land adults lengthy jail terms under law group's recommendation for new offence

- Law Reform Commission proposes making failure to act on evidence of serious physical injuries, psychological or psychiatric harm a criminal offence
- Relatives, teachers, social workers and others in regular contact with children would be responsible for flagging concerns under proposals



There is currently no mandatory system in Hong Kong for reporting child abuse. Photo: Shutterstock

Adults who fail to report serious physical injury, or psychological and psychiatric harm to a child in their care could face lengthy jail terms under a new offence to be recommended to the Hong Kong government, the Post has learned.

But legal experts called for calm from teachers, social workers, domestic workers, and relatives, and said the new “failure to protect” offence would only target the irresponsible, as the city reeled from one of the city’s most distressing child murders in recent years.

The Law Reform Commission is set to release the final version of its report, which is aimed at recommending imposing legal liability on those “causing or allowing the death or serious harm of a child”, in late May.

The report will put renewed pressure on the government to move quickly to stem child-abuse cases arising from their caretakers’s failure to step in, which, in many cases, has contributed to the victim’s prolonged suffering.

The couple’s murder of their five-year-old daughter, whose access to help was mired in bureaucracy, has brought child welfare issues into the spotlight recently. A judge described the abuse in that case as “extreme cruelty” when sentencing the pair to life in prison.



Stephen Hung, from the Law Reform Commission of Hong Kong. Photo: Dickson Lee

The proposed new offence would criminalise any “failure to protect a child or vulnerable person where the child’s or vulnerable person’s death or serious harm results from an unlawful act or neglect”. An offender could be jailed up to 20 years if their failure resulted in a child’s death.

A source told the Post that officials were undecided whether to include serious psychological and psychiatric harm as warning signs that warrant flagging, when it released its preliminary proposals in 2019.

But the group, made up of experienced academics, criminal lawyers, a senior police superintendent and a former judge, decided to incorporate that in the final report, the source said.

However, people would have nothing to worry about if it was not readily obvious to them that the child under their care was being abused.

Stephen Hung Wan-shun, a member of the Law Reform Commission of Hong Kong, said a consultation report outlining the recommended changes had been completed and handed to the government for consideration.

Hung said victims might not be able to communicate the abuse they were suffering, and could also find it difficult to identify the offender, making prosecutions challenging.

“The law is the baseline for morality,” he told a radio programme. “In principle, teachers and social workers should be alerted when they see unusual wounds on children or the elderly. Whether or not there is a law requiring them to report the case, they have a responsibility to do something about it.”

Hung said the proposed changes would apply to those who “lived under the same roof” as the victim in question, including relatives and domestic workers.



Under the existing system of voluntary reporting, family members and professionals, such as social workers, do not have a statutory duty to report suspected child abuse. Photo: Shutterstock

Those filing a report of suspected child abuse did not have to notify police immediately and could first consult the Social Welfare Department and other child protection agencies, Hung said.

Under the existing system of voluntary reporting, family members and professionals, such as social workers, do not have a statutory duty to report suspected child abuse.

Yan Ho-on, chairman of the Hong Kong Early Childhood Educators Association, said while they agreed it was necessary to increase child protection, criminalisation could cause concern among some teachers and social workers. "You can spot the basic injuries," he said. "But it may cause worries when it comes to hidden injuries or psychiatric harm."

A frontline social worker, who preferred to remain anonymous, said the law lacked certainty and urged the government to consult the sector during the legislation process.

Barrister Azan Marwah, who specialises in child protection law and helped draft a bill in 2019 for then lawmaker Fernando Cheung Chiu-hung, said his proposal had included wider protection.

He said there should be laws to protect retaliation against those who report the abuse, a move which could make, for instance, domestic helpers more comfortable flagging problems.

On a wider note, he added, there should be legal obligations, for example, to compel authorities to deal with not just the victims of child abuse but also their siblings, an arrangement currently lacking in the law.

Donna Wong Chui-ling, director of the children's rights group Against Child Abuse, said there was not enough impetus for adults to report suspected abuse cases on a voluntary basis under current child protection guidelines.



A lot of child abuse cases start out with parents using corporal punishment on their children

Against Child Abuse director Donna Wong

Child abuse incidents arose quite often but could be hard to detect, Wong warned, as she supported calls to make it mandatory for childcare providers to report suspicious cases.

“As regulations in this area are still in discussion, it could be implemented step by step, starting with professionals,” Wong said, referring to schoolteachers and social workers.

She also suggested the city should impose regulations to ban corporal punishment of children to end abuse once and for all.

“A lot of child abuse cases start out with parents using corporal punishment on their children as disciplinary methods,” she added.

Secretary for Labour and Welfare Law Chi-kwong said on Tuesday the commission was studying whether to enforce a mandatory reporting system under local legislation, with government deliberations expected to run until mid-2021. The developments come in the week a court case concluded one of Hong Kong’s most shocking instances of child abuse.

The young girl’s murder three years ago followed months of chronic abuse at the hands of her father, stepmother and step-grandmother.

The court heard the abuse was a significant cause of her death because it weakened her immune system’s ability to fight the salmonella infection that eventually killed her.

Legal protection of children from ill-treatment and sexual abuse in Hong Kong is not enshrined in one piece of legislation as in many other jurisdictions, but is contained within several laws such as the Offences against the Person Ordinance and the Crimes Ordinance.

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Reference: <https://amp.scmp.com/news/hong-kong/law-and-crime/article/3130424/hong-kong-officials-urged-introduce-new-criminal>